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In re Application of

YUAN, et al.

Application No.: 09/914,957

PCT No.: PCT/US00/06371

Int. Filing Date: 10 March 2000

Priority Date: 11 March 1999

Attorney Docket No.: 99,134-E

For: ARYL FUSED 2,4-DISUBSTITUTED

PYRIDINES: NK3 RECEPTOR LIGANDS

DECISION ON PETITION

UNDER 37 CFR 1.181

This decision is in response to applicant's correspondence filed 15 April 2003 in the United States Patent and Trademark Office (USPTO). The filing is being treated as a petition under 37 CFR 1.181 to withdraw the holding of abandonment in the present application. No petition fee is due.

BACKGROUND

On 10 March 2000, applicant filed international application PCT/US00/06371 which claimed priority to an application filed 11 March 1999. A Demand for international preliminary examination, in which the United States was elected, was filed prior to the expiration of nineteen months from the priority date. Accordingly, the thirty-month period for paying the basic national fee in the United States expired at midnight on 11 September 2001.

On 30 August 2001, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by payment of the requisite basic national fee as required by 35 U.S.C. 371(c)(1).

On 26 October 2001, applicant was mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) informing applicant of the need to provide a signed oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the International application number and international filing date. Applicant was provided two months to file the proper response and advised that this time could be extended pursuant to 37 CFR 1.136(a).

On 21 November 2002, applicant was mailed a NOTIFICATION OF ABANDONMENT

(Form PCT/DO/EO/909) for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) mailed 26 October 2001 within the time period set therein.

On 15 April 2003, applicant responded with the present petition.

DISCUSSION

The best evidence of what was actually received by the Office is a postcard receipt containing a specific itemization of all the items being submitted. See MPEP 503. Here, applicant has provided a copy of the date-stamped postcard receipt. The postcard identifies the application by applicant, application number and docket number. Among the items listed on the receipt is "Declaration and Power of Attorney" The receipt is stamped "JC07 Rec'd PTO/PCT 22 JAN 2002." Thus, it is clear that applicant filed an executed combined declaration and power of attorney on 26 March 2002. In addition, an examination of the fee records for the present application shows that the surcharge for filing an executed oath or declaration of the inventor later than thirty months from the priority date, as well as the other noted fees, was credited to the application on that date. For the reasons stated above, it is proper to grant applicant's petition at this time and accept the copy of the combined declaration and power of attorney filed 15 April 2002 as a substitute for the combined declaration and power of attorney originally filed 22 January 2002.

It is noted that applicant's response filed 22 January 2002 includes certification under 37 CFR 1.8 that the filing was deposited for mailing on 28 November 2001 and is therefore considered a timely response to the Form PCT/DO/EO/905 mailed 26 October 2001. Further, a review of the application file reveals that all of the requirements of 35 U.S.C. 371 for entry into the national stage in the United States have now been satisfied.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is **GRANTED**.

The "NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909)" mailed on 21 November 2002 is hereby **VACATED**.

The application has an international filing date of **10 March 2000** under 35 U.S.C. 363 and will be given a date of **22 January 2002** under 35 U.S.C. 371(c).

Application No.: 09/914,957

3

This application is being returned to the United States Designated/Elected Office (DO/EO/US) for treatment in accordance with this decision.

A handwritten signature in black ink, appearing to read "Derek A. Putonen". The signature is stylized with a large initial "D" and a long, sweeping underline.

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